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ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

**UNITED STATES OF
AMERICA,**
Plaintiff,
vs.
RODOLFO GUTIERREZ, JR.,
Defendant.

CR 09-72-BLG-RFC

OFFER OF PROOF

Plaintiff, United States of America, by and through Kurt G. Alme,
First Assistant United States Attorney for the District of Montana,
hereby files its Offer of Proof.

THE CHARGES

The defendant is charged by Indictment with: Counts I-III, Wire Fraud, in violation of 18 U.S.C. § 1343; Count IV, Bank Fraud, in violation of 18 U.S.C. § 1344(1); Counts V-VII, Mail Fraud, in violation of 18 U.S.C. § 1341; and Count VIII, Aggravated Identity Theft, in violation of 18 U.S.C. §§ 1028A and 2.

PLEA AGREEMENT

The defendant filed a motion to change his plea to guilty on February 19, 2010, and filed a plea agreement on February 24, 2010. Pursuant to that agreement, the defendant has indicated his intent to plead guilty to Count IV, Bank Fraud. Also pursuant to the agreement, the defendant has agreed to make restitution to the victims of all of the counts that will be dismissed.

ELEMENTS OF THE CHARGE TO WHICH HE WILL PLEAD

In order for the defendant to be found guilty of Bank Fraud, in violation of 18 U.S.C. § 1344(1), the United States must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly carried out a material scheme to defraud a financial institution;

Second, the defendant acted with the intent to defraud; and

Third, the bank was federally insured.

PENALTY

The charge in Count IV carries a maximum of 30 years imprisonment, \$1,000,000 fine, and five years of supervised release.

ANTICIPATED EVIDENCE

If this case were tried, the United States would prove the following:

1. At all times relevant to the time period set forth in Count IV of the Indictment, the defendant was the majority owner of Incredible Auto Sales, LLC (“IAS”). IAS sold new and used vehicles, doing business under the names “New Beginnings” and “Incredible Kia,” in

Billings, Montana. IAS had an inventory flooring loan agreement with Hyundai Motor Finance Company (“HMFC”).

2. Net-Works Ad Agency, Inc. (“Net-Works”) was the personal corporation of the defendant and his wife. On May 19, 2005, the defendant and his wife, on behalf of Net-Works, entered into an inventory flooring loan agreement (“Loan Agreement”) with Little Horn State Bank (“LHSB”).

3. Contrary to the Loan Agreement, the defendant had employees sell vehicles which had been floored with LHSB, and not timely repay LHSB, causing Net-Works to be “out-of-trust” with LHSB. The defendant directed employees to provide false information during inventories conducted by LHSB, to deceive LHSB into concluding that repayment was not late.

4. Contrary to the Loan Agreement, beginning on August 29, 2005, the defendant had employees double floor vehicles. The last double floor ended in November, 2006. The vehicles were floored with LHSB and with HMFC at the same time. In addition, the defendant had employees floor vehicles with LHSB that had been received on trade-in and which had liens against them from previous loans.

5. Contrary to the Loan Agreement, the defendant had employees floor vehicles with LHSB which were not owned by Net Works or IAS because they had already been sold to customers or were owned by another entity.

6. The defendant acted with the intent to defraud.

7. At all times relevant to the time period set forth in Count IV of the Indictment, the deposits of LHSB were federally insured.

DATED this 25th day of February, 2010.

MICHAEL W. COTTER
United States Attorney

/s/ Kurt G. Alme
KURT G. ALME
First Assistant U.S. Attorney
Attorney for Plaintiff